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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,477	06/14/2006	Mark Brian Dowty	965/200/US	7031
23638 7590 11/14/2008 ADAMS INTELLECTUAL PROPERTY LAW, P.A. Suite 2350 Charlotte Plaza 201 South College Street CHARLOTTE, NC 28244				
EXAMINER				
EDELL, JOSEPH T				
ART UNIT		PAPER NUMBER		
3636				
MAIL DATE		DELIVERY MODE		
11/14/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/596,477

**Applicant(s)**

DOWTY ET AL.

**Examiner**

JOSEPH F. EDELL

**Art Unit**

3636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 October 2008.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.  
4a) Of the above claim(s) 1-8 and 13-21 is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 9-12 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 14 June 2006 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date 06/14/06  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

As Examiner requires election to a single species, claims 1-8 and 13-21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Drawings***

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the interconnected first and second blocks (claim 11) and the non-slip surface (claim 12) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for

consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

Claim 10 is objected to because of the following informalities: "seat" in lines 3 and 5 should read --seat bottom-- as the first and second blocks are seat elements and therefore are unable to move relative to the seat. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 11 is rejected under 35 U.S.C. 112, first paragraph, as based on a disclosure which is not enabling. The structural elements defining the interconnection between the first and second blocks causing forward and rearward movement is critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. See *In re Mayhew*, 527 F.2d 1229, 188 USPQ 356 (CCPA 1976). The omitted subject matter is essential because one of ordinary skill in the art is

unable to make the claimed invention without an explanation of the structural elements that control the interconnected forward and rearward movement of the first and second blocks.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 9- are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,435,744 to Santaniello.

Santaniello discloses a seat that includes all the limitations recited in claims 9, 10, and 12. Santaniello shows a seat having a frame 6 (see Fig. 1) capable of being attached to a vehicle floor 7, a seat bottom 5 disposed on the frame, a footrest 14 disposed forward of the seat bottom capable of supporting a user's feet above the floor with each foot in a different longitudinal position relative to the seat bottom, a first block (top block of Fig. 2) of the footrest mounted for longitudinal translation relative to the seat bottom, a second block (bottom block of Fig. 2) of the footrest mounted for longitudinal translation relative to the seat bottom, and a non-slip surface (lip of the footrest block shown in Fig. 3).

Claims 9-11, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,589,717 to Alexander.

Alexander discloses a seat that includes all the limitations recited in claims 9-11, as best understood. Alexander shows a seat having a frame (frame of bicycle 21 shown in Fig. 1) capable of being attached to a vehicle floor 11,13, a seat bottom 23 disposed on the frame, a footrest 24 disposed forward of the seat bottom capable of supporting a user's feet above the floor with each foot in a different longitudinal position relative to the seat bottom, a first block (top block) of the footrest mounted for longitudinal translation relative to the seat bottom, and a second block (bottom block) of the footrest mounted for longitudinal translation relative to the seat bottom wherein the first and second blocks are interconnected such that the forward longitudinal movement of one block causes rearward longitudinal movement of the other block.

Claims 9-11, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,561,668 to Klopfenstein.

Klopfenstein discloses a seat that includes all the limitations recited in claims 9-11, as best understood. Klopfenstein shows a seat having a frame 2,3 (see Figs 7 & 8) capable of being attached to a vehicle floor, a seat bottom 1 disposed on the frame, a footrest 23,27 disposed forward of the seat bottom capable of supporting a user's feet above the floor with each foot in a different longitudinal position relative to the seat bottom, a first block 23 of the footrest mounted for longitudinal translation relative to the seat bottom, and a second block 27 of the footrest mounted for longitudinal translation relative to the seat bottom wherein the first and second blocks are interconnected such that the forward longitudinal movement of one block causes rearward longitudinal movement of the other block.

**Conclusion**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to seats:

U.S. Pat. No. 5,711,578 to Wagener      U.S. Pat. No. 6,283,529 B2 to Kitagawa  
U.S. Pat. No. 6,527,327 B2 to Gaus et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Joseph F Edell/  
Primary Examiner, Art Unit 3636  
November 14, 2008